

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:	)	Case No. 18-80386
	)	
LENT CHRISTOPHER CARR, II	)	Chapter 13
DELTARINA V. CARR	)	
Debtors.	)	
_____	)	

**RESPONSE TO MOTION FOR RELIEF FROM ORDER**

NOW COME the Debtors, by and through their undersigned attorney, and respond in opposition to the motion for relief from the order disallowing claim #5. By way of further response the Debtors show as follows:

1. Claim #5 was disallowed by order entered October 26, 2018 following a hearing held on October 18, 2018, at which the creditor did not appear. That hearing was continued from October 4, 2018 on request of the creditor.
2. Bankruptcy Rule 9024 governs relief from orders of the bankruptcy court and incorporates Rule 60 of the Federal Rules of Civil Procedure. Therein, Rule 60(b) provides the several grounds for relief from a final order, such as the one in this case disallowing claim #5.
3. In the motion for relief, the movant sets out information related to the underlying question of allowance or disallowance of the claim. However, no information is provided as to the basis, under Rule 60(b), why the court might properly revisit that question, other than an assertion of fraud on the court.
4. Relief based on fraud on the court under Rule 60(b)(3) would require pleading with particularly under Rule 9 of the Federal Rules of Civil Procedure (made applicable herein by Bankruptcy Rules 9014 and 7009) circumstances by which the Debtors procured the order disallowing the claim by fraud to this court. No such allegations have been pled.
5. The motion for relief was filed more than eight months after the order disallowing the claim. Rule 60(c)(1) requires a motion under Rule 60(b) to be made within a reasonable time, and the motion does not explain this delay.

WHEREFORE, the Debtors pray that the Court enter an Order denying the motion for relief from the order disallowing claim #5.

Respectfully submitted, this the 23rd day of October, 2019

s/ Erich M. Fabricius

Erich M. Fabricius, NC State Bar No. 39667

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion was served this day on the following parties, via first class mail unless otherwise indicated:

Richard M. Hutson II  
Chapter 13 Trustee  
(via CM/ECF)

Janetta Jordan  
4160 Laurinburg Rd.  
Raeford, NC 28376

This 23rd day of October, 2019

s/ Erich M. Fabricius